

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

**NOTICE OF PROPOSED ACTION AND
NOTICE OF PUBLIC HEARING**

December 21, 2001

RH-402

**California Code of Regulations
Title 10, Chapter 5**

SUBJECT OF HEARING

A hearing will be initiated regarding proposed changes to the persistency optional automobile rating factor regulation found at California Code of Regulations, title 10, chapter 5, subchapter 4.7, section 2632.5, subdivision (d)(11).

AUTHORITY AND REFERENCE

The Insurance Commissioner proposes to adopt and amend the subject regulation under the authority of Insurance Code sections 1861.02, subdivisions (c) and (e), 1861.05; *CalFarm Insurance Company v. Deukemejian* (1989) 48 Cal. 3d 805 [258 Cal.Rptr. 161]; and *Spanish Speaking Citizens Foundation, Inc. v. Low* (2000) 85 Cal. App. 4th 1179 [103 Cal. Rptr. 2d 75]. The Commissioner's decision on the proposed changes to the regulations will implement, interpret and make specific Insurance Code section 1861.02, subdivision (c).

PUBLIC HEARING

The Insurance Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation as follows:

Date and time:	February 28, 2002 - 10:00 a.m.
Location:	Department of Insurance Hearing Room 45 Fremont Street, 22nd Floor San Francisco, CA 94105

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS

All persons are invited to present oral and/or written comments at the scheduled hearing. Written comments not presented at the hearing must be addressed to the following contact person:

Antonio Celaya, Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4117

Questions regarding the hearing, comments, or the substance of the proposed action should be addressed to the above contact person. If he is unavailable, inquiries may be sent to the backup contact person:

Bryant Henley, Staff Counsel
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4111

DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearings, must be received by the Insurance Commissioner, c/o the contact person at the address listed above, by no later than **5:00 p.m. on February 28, 2002**. Any materials received after that time will not be considered.

COMMENTS TRANSMITTED BY ELECTRONIC COMMUNICATION

The Commissioner will accept written comments transmitted by e-mail, provided they are sent to the following e-mail address: celayaa@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile. All comments sent by facsimile must be to the following fax number: (415) 904-5490. **Comments sent to other e-mail addresses will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline for written comments set forth above.**

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed above) for this hearing in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of subchapter 4.5, title 10, of the California Code of Regulations, in connection with their participation in this matter. Persons interested in inquiring about the appropriate procedures should contact the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing, listed above. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

California Insurance Code section 1861.02, subdivision (a)(4) provides that the Commissioner may adopt, by regulation, automobile rating factors that have a substantial relationship to the risk of loss. Optional rating factors adopted by the Commissioner by regulation are used to determine automobile insurance rates and premiums. (Ins. Code, § 1861.02, subd. (a)(4).) The Commissioner previously promulgated such regulations at California Code of Regulations, title 10, chapter 5, subchapter 4.7, section 2632.5. One optional rating factor adopted by the Commissioner allows an insurer to utilize “persistence” as an optional rating factor. (Cal.Code Regs., tit. 10, § 2632.5, subd. (d)(11).) Persistence is not defined in the California Code of Regulations. The Commissioner has determined that insurers have implemented differing interpretations of the meaning of persistence as an optional rating factor. Some insurers have interpreted persistence to mean the length of time a consumer has continuously maintained automobile insurance exclusively with the present insurer. Other insurers have defined persistence more broadly to include coverage by different insurers, so long as there is not a lapse in coverage. The Commissioner has noted that some of these insurers required consumers to provide evidence of prior insurance to show that the consumer was “persistently” covered by one insurer or another over time.

California Insurance Code section 1861.02, subdivision (c) provides that the absence of prior insurance cannot be used, in and of itself, to determine automobile rates, premium, or insurability generally. The Commissioner is empowered under Insurance Code section 1861.02, subdivision (e) to adopt regulations to implement Insurance Code section 1861.02.

The Commissioner has determined that certain modifications to the use of persistence as an optional rating factor are necessary to effectively prevent the use of prior insurance for the assignment of automobile rates, premiums or insurability.

The Commissioner proposes to amend California Code of Regulations, title 10, section 2632.5, subdivision (d)(11). The proposed amendment to subdivision (d)(11) will require each insurer to consider only the length of time a consumer has been continuously covered with the present insurer, and no other, when using persistency as an optional rating factor.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code Section 11346.45, is not required to implement the proposed regulation, because the issue addressed is not so complex that it cannot easily be reviewed during the comment period. Notwithstanding the lack of complexity of the issue, prior to publishing public notice, the California Department of Insurance mailed a Request for Public Input to all persons who previously requested mailed notice of proposed regulatory action. The California Department of Insurance also posted the Request for Public Input on its publicly accessible website. The California Department of Insurance utilized the comments provided pursuant to the Request for Public Input in formulation of the proposed regulation.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

This proposed regulation does not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO ANY STATE AGENCY

The Commissioner has determined that there will be no cost or savings to any local agency, state agency or school district from the proposed regulations, and that the proposed regulation will not affect federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH OTHER STATES

The Department of Insurance has made an initial determination that the adoption of this regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The types of businesses that this regulation concerns are insurers licensed to market personal automobile insurance in the State of California. A small percentage of insurers with rating guidelines that currently violate Insurance Code, section 1861.02, subdivision (c) will have to file modifications to their existing class plans. These insurers will also have to comply with their newly modified rating guidelines. Insurers regularly file modifications to their class plans in the

course of doing business, and therefore, the changes required by this regulation will not be significant.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

Other than as previously indicated, the Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON JOBS IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes of the regulations or would be as effective and less burdensome to affected private persons. The purpose of the proposed regulation is to implement a statutory mandate. To date, no reasonable alternative to the proposed regulations is apparent. The Commissioner, however, invites public comment on alternatives to the regulations.

IMPACT ON SMALL BUSINESS

The matters proposed herein will affect insurance companies, and therefore will not affect small business. (Gov. Code § 11342.610, subd. (b)(2).)

TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Insurance Commissioner has prepared an initial statement that sets forth the reasons for the proposed action. The Insurance Commissioner also has available all the information upon which this proposed action is based, and the express terms of the proposed action.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information contained in the rulemaking file, is available for inspection and copying **by prior**

appointment at 45 Fremont Street, 21st Floor, San Francisco, California, 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Written requests for the rulemaking file or questions regarding this proceeding should be directed to the contact persons listed above.

FINAL STATEMENT OF REASONS

Upon **written or e-mail** request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Written requests for the final statement of reasons should be directed to the contact person listed above.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at <http://www.insurance.ca.gov>. Near the top of the page, you will see the major heading "Protecting Consumers." In this section, scroll down until you see the subheading "BE INFORMED." Click on the nearby "Search for Proposed Regulations" link. When the search field appears, enter "RH402" (the Department's regulation file number for these regulations). Alternatively, search for the California Insurance Code number of a code section that the regulations implement (for instance, "1861.02(c)"), or search by key word ("persistency," for example). Then, click on the "Submit" button to display links to the various filing documents.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, which contains the general substance of the proposed regulation, the Initial Statement of Reasons, and the text of the proposed regulation will automatically be sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF MODIFIED TEXT OF REGULATION

If the regulations adopted by the Department differ from but are sufficiently related to the original text, the Department will make the modified text available to the public for at least 15 days prior to the date of adoption.

Dated: December 21, 2001

HARRY W. LOW
Insurance Commissioner

By /s/
Antonio Celaya
Staff Counsel